

# **Hearing on Saving Investors Money and Reducing Excessive SEC Fees**

**Prepared Testimony of Mr. Christopher C. Quick**

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**Testifying on behalf of The Specialist Association of the New York Stock Exchange**

**Before the House Financial Services Committee,**

**Subcommittee on Capital Markets, Insurance,**

**and Government Sponsored Enterprises**

**March 7, 2001**

Chairman Baker, Members of the Subcommittee, good morning. I am Christopher Quick, CEO of Fleet Meehan Specialist and a member of the Board of Directors of The Specialist Association of the New York Stock Exchange. I am pleased to appear before you to present the Association's views on reducing excessive fees collected by the Securities and Exchange Commission ("SEC"). My testimony will focus on transaction fees, commonly known as Section 31 fees, imposed by Section 31 of the Securities Exchange Act of 1934 ("Exchange Act").

The Specialist Association is comprised of 18 broker-dealer firms, which include all of the individual specialists of the New York Stock Exchange ("NYSE"). Our specialists are at the heart of the auction market of the world's most active stock exchange. The Exchange's auction trading marketplace is *the* mechanism through which the prices of stocks listed on the Exchange are "discovered" and liquidity is provided to buyers and

sellers. We coordinate orderly trading in our respective specialty stocks. We supply liquidity when necessary to the proper operation of the market, acting as buyer or seller in the absence of public demand to buy or sell in those stocks.

Over 260 billion shares of stock were traded on the Exchange in 2000 in more than 221 million transactions. Specialists participated as principal, selling for their own accounts, in 13.6% of those transactions, paying approximately \$50 million in Section 31 fees last year (an amount we expect to significantly increase this year). A total of \$370 million was paid in Section 31 fees in 2000 on NYSE transactions by all NYSE member firms and their customers. Over 86% of transaction fees paid on the NYSE floor are passed directly on to investors.

Beginning in the 1930s, the federal government, through the SEC, has collected fees on the registration of securities under the Securities Act (“Section 6(b) fees”) and on sales of securities under the Exchange Act (“Section 31 fees”). Although these fees were initially intended as user fees to defray the costs of federal securities regulation, the amounts collected have exceeded the cost of running the SEC since 1983. As discussed below, those collected amounts now are more than six times the SEC’s budget. In short, the Section 6(b) and Section 31 fees have become a general tax on capital raising and a tax on American investors. Moreover, as I will discuss in a moment, Section 31 fees represent a tax imposed at a particularly inopportune time in the life cycle of a specialist’s or market maker’s capital.

Please let there be no misunderstanding. We support continued full funding for the SEC, an agency that has overseen our constantly growing, remarkably fair and efficient markets that raise new capital and serve the public investor, contributing to our worldwide reputation for fairness and integrity. What we object to is misuse of the financing mechanism designed to offset the cost of operating the SEC through over-collection of the fees and application of the proceeds to completely unrelated purposes.

As things stand, the Section 31 fee cannot be viewed as anything but a tax on the sale of securities, a purpose for which it was never intended. Although assessed in relatively small increments – it is currently set at 1/300 of one percent of the total dollar amount of securities sold, the tax is creating a drag of over one billion dollars per year on the capital markets. This drag on our markets represents a cost paid by all investors, including the huge number of individual participants in mutual funds, pension plans, and other forms of retirement accounts.

These fees have consistently grown over years. In fiscal 1999, the SEC's fee collections from Section 6(b) and Section 31 fees (and fees related to mergers and tender offers) mushroomed to \$1.75 billion. That is, the SEC's fee collections amounted to more than five times its \$337 million budget. In fiscal 2000, the agency collected more than \$2.27 billion, more than six times what was needed to fund its operation.

To bring transaction fees back into line with the cost of running the SEC, there have been efforts to cap or reduce Section 31 fees. These efforts are supported by, among many

others, Americans for Tax Reform, the National Taxpayers' Union, Citizens for a Sound Economy, the U.S. Chamber of Commerce, the Profit Sharing/401(k) Council, the Security Traders Association, the Securities Industry Association, and all the securities and options markets, including the New York Stock Exchange and our Association.

Also, we expect the trading volume on the Exchange to continue to increase, which in turn will have the effect of increasing the Section 31 tax. In 1999, the average daily trading volume was 809 million shares. In 2000, it was over one billion shares. And with decimalization now fully implemented, volume will surely increase again by a significant amount (as it did when the standard trading increment was reduced to 1/16 from 1/8).

The Section 31 "tax" is unfair particularly to our members because it in effect imposes a tax on the amount of gross revenue, rather than on profits. Thus, our members must pay this tax regardless of whether their business is profitable. Moreover, the Section 31 tax is imposed at a particularly inopportune time in terms of its ultimate effect on market liquidity. Unencumbered by Section 31 fees, revenue generated by specialists and market makers in securities transactions could be used by these market professionals to make our markets more efficient through investment in technology, provide more liquidity to the market and provide additional benefits to American investors. Thus, investors and the market in general lose more than simply the amount of the Section 31 fees themselves in terms of sacrificed market liquidity and efficiency.

We would also be wise to remember that we have had the benefit of a thriving and competitive bull market for an unprecedented number of years. During such times, the impact of measures placing inappropriate burdens on capital formation and market activity can be softened or blunted. As is often the case with respect to ill-advised policy, it is only when market conditions eventually decline and liquidity becomes more scarce that the full brunt of a cloaked tax such as the current Section 31 fees will be felt by us all. This will be particularly true to the extent that market prices stagnate or decline as they have in the last 12 months.

In conclusion, general tax revenue is the objective of other laws, but not the securities laws. Congressional action to restore the unintended tax now represented by the Section 31 fee to its original purpose — to fund the operations of the SEC, and not for any other type of federal expenditure — is long overdue. Reducing excessive SEC fees would save millions of individuals money as they try to invest their hard-earned money for their future. We urge the Subcommittee to move forward with legislation to reduce excessive SEC fees. We are committed to working with you and this Subcommittee regarding this important matter.

Last month, the Association submitted written testimony supporting the Senate Bill, S. 143 – The Competitive Market Supervision Act of 2001. In addition to reducing SEC fees, this bill would preserve the high quality of securities regulation by ensuring that the SEC is fully funded and by providing pay parity for SEC staff with the federal banking agencies. The Association supports these provisions.

The Association is thankful for this opportunity to express its views on the Section 31 fee. Thank you, Mr. Chairman. I would be pleased to respond to any questions you or other Subcommittee members may have.

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